

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS AT BOSTON

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HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF  
AMERICA, INC., and  
FRANCESCO CIAMBRIELLO

Defendants.

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**PLAINTIFF HEATHER KIERNAN'S OPPOSITION TO THE DEFENDANTS'  
MOTION TO CONTINUE SCHEDULED TRIAL DATE**

The Plaintiff in the above captioned matter hereby opposes the Motion to Continue the Trial Date (no. 69).

In support, the undersigned respectfully represents<sup>1</sup>:

1. The assertions in paragraph 1 of the Defendants' motion are not contested.
2. The assertions in paragraph 2 are not contested. Her expected due date is May 27.
3. The assertions in paragraph 3 are not contested. However, the undersigned has conferred with the Plaintiff and advised and instructed her to confer with her medical doctor to discuss the trial date of May 7, 2007, the length of trial, as well as the stress of having to prepare for trial and to testify. The Plaintiff has

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<sup>1</sup> In opposing the motion, the Plaintiff responds to each number paragraph of the Defendants' motion using the same corresponding paragraph numbers.

represented to the undersigned that her medical doctor has no concerns, and Plaintiff has advised the undersigned that she is prepared to move forward on the scheduled date.

4. The Plaintiff believes that the Defendants' concerns might be justified if, and only if, the Plaintiff went into labor while testifying (or after the trial started and before she was able to testify). As the Plaintiff has conferred with her medical doctor about these issues, this is not anticipated.
5. Plaintiff believes that the Defendants express concerns are not justified. Defendants' concerns that they will be prejudiced by the Plaintiff's pregnancy, or that the jury will be sympathetic to her could be easily addressed through a jury instruction.
6. Defendants' have cited no authority, legal or non-legal, to suggest that the Plaintiffs' pregnancy might cause the jury to have undue sympathy for her. If we follow the Defendants arguments, the Defendants would be entitled to a continuance if on the date of trial the Plaintiff required crutches, or had her arm in a sling due to an injury . A jury might also have sympathy for her under those circumstances. Again, any concern for the potential of unfair prejudice could be addressed via a curative motion. There is no justification to continue the trial.
7. Continuing the trial to a later date will only prejudice this Plaintiff. The Court is reminded that the incident which gives rise to the

allegations in this case occurred in May 2001<sup>1</sup>. Additionally, it is axiomatic that if the Defendants wish to wait until the Plaintiff gives birth, the Court will need to extend the trial at least 8 weeks forward as the Plaintiff will be recovering from the birth, as well as attending to her newborn.<sup>2</sup> This includes, but it not limited to, feeding.

WHEREFORE, for all of the foregoing reasons, the Plaintiff respectfully requests that Defendants' Motion to Continue Scheduled Trial Date be DENIED and that the Court enter any additional relief deemed equitable, just and proper.

DATED: March 15, 2006

Respectfully submitted:  
HEATHER KIERNAN

/s/ William J. McLeod  
William J. McLeod, BBO No. 560572  
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Certificate of service

In accordance with the rules of this Court, I hereby certify today, March 15, 2006, that I caused a true copy of this document to be served on all parties listed below, who are participants in the Court's ECF program:

David Ardito, counsel for Ciambriello  
Allison Romantz, counsel for AMSA

/s/ William J. McLeod  
William J. McLeod

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<sup>2</sup> The Plaintiff also has two small children, ages 1 and 7.